

<p>This Opinion is Not a Precedent of the TTAB</p>

Mailed: July 18, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re En Primeur Wines, Inc.

Serial No. 87170488

Theodore R. Remaklus of Wood Herron & Evans LLP,
for En Primeur Wines, Inc.

Eliana Torres, Trademark Examining Attorney, Law Office 110,
Chris A. F. Pedersen, Managing Attorney.

Before Taylor, Greenbaum and Gorowitz,
Administrative Trademark Judges

Opinion by Greenbaum, Administrative Trademark Judge:

En Primeur Wines, Inc. (“Applicant”) filed an application seeking registration on the Principal Register of the mark MY EN PRIMEUR (in standard characters, EN PRIMEUR disclaimed) for “On-line retail store services featuring wine” in International Class 35.¹

¹ Application Serial No. 87170488 was filed on September 14, 2016 based upon Applicant’s allegation of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b). The application includes the following translation statement: “The English translation of EN PRIMEUR in the mark is THE FIRST.”

The Trademark Examining Attorney has refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark, when used in connection with Applicant's services, so resembles the previously registered marks EN PRIMEUR WINERY SERIES (in standard characters, WINERY SERIES disclaimed)² and EN PRIMEUR WINERY SERIES and design (EN PRIMEUR WINERY SERIES disclaimed), displayed as



,³ both for "Kits for making wine at home" in International Class 33 and owned by one registrant, as to be likely to cause confusion, mistake or deception.

When the refusal was made final, Applicant appealed. We affirm.

I. Applicable Law – Likelihood of Confusion

When the question is likelihood of confusion, we analyze the facts as they relate to the relevant factors set out in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). *See also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or services. *See In re Chatam Int'l Inc.*, 380 F.2d 1340, 71 USPQ2d

² Registration No. 5189063 issued on April 25, 2017 (with no translation statement).

³ Registration No. 5216277 issued on June 6, 2017 with the following translation statement: "The English translation of 'EN PRIMEUR' in the mark is 'THE FIRST.'" Color is not claimed as a feature of the mark.

1944, 1945-46 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”). We discuss below these and other relevant factors. *See M2 Software, Inc. v. M2 Commc’ns, Inc.*, 450 F.3d 1378, 78 USPQ2d 1944, 1947 (Fed. Cir. 2006) (even within *du Pont* list, only factors that are “relevant and of record” need be considered); *see also In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (“The likelihood of confusion analysis considers all *DuPont* factors for which there is record evidence but ‘may focus ... on dispositive factors, such as similarity of the marks and relatedness of the goods’”) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)).

In this case, we have based our Section 2(d) likelihood of confusion findings and decision only on Registration No. 5189063 for the standard character mark EN PRIMEUR WINERY SERIES, as it is more similar to Applicant’s mark than is the



mark in Registration No. 5216277. If we do not find likelihood of confusion on the basis of this previously registered mark, we would not find a likelihood of confusion as to the other mark. *See In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1516 (TTAB 2016); *In re Max Capital Grp., Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010).

A. The similarity or dissimilarity of the marks

We first compare Applicant's mark MY EN PRIMEUR and Registrant's mark EN PRIMEUR WINERY SERIES, both in standard characters, "in their entirety as to appearance, sound, connotation and commercial impression." *Viterra*, 101 USPQ2d at 1908 (quoting *du Pont*, 177 USPQ at 567). See also *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005). "The proper test is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression such that persons who encounter the marks would be likely to assume a connection between the parties." *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (quotation omitted). Further, marks "must be considered ... in light of the fallibility of memory" *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014) (quoting *San Fernando Elec. Mfg. Co. v. JFD Elecs. Components Corp.*, 565 F.2d 683, 196 USPQ 1 (CCPA 1977)). The proper focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *In re Binion*, 93 USPQ2d 1531, 1534 (TTAB 2009); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). "[S]imilarity is not a binary factor but is a matter of degree." *St. Helena Hosp.*, 113 USPQ2d at 1085 (quoting *In re Coors Brewing Co.*, 343 F.3d 1340, 68 USPQ2d 1059, 1062 (Fed. Cir. 2003)). Here, the average customer includes members of the general public who drink wine and who are interested in making wine at home.

Applicant argues that the Examining Attorney has dissected the marks and has not given proper weight to the word MY in Applicant's mark. Applicant contends Registrant's mark is entitled only to a narrow scope of protection because the shared term EN PRIMEUR is "unquestionably descriptive ... and the entirety of the phrase 'EN PRIMEUR WINERY SERIES' of the cited registrations is descriptive and weak."⁴ Applicant also contends that when considered in their entireties, the marks look and sound different, they have different meanings, and they create different commercial impressions. The Examining Attorney focuses on the visual, aural, and connotative similarities between the marks due to the shared term EN PRIMEUR, which she contends is the dominant portion of both marks. We agree with the Examining Attorney's assessment of the similarity of the marks.

Because the similarity or dissimilarity of the marks is determined based on the marks in their entireties, our analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on the entire marks, not just part of the marks. *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985); *see also Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 233, 234 (CCPA 1981) ("It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion."). On the other hand, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on a consideration of the

⁴ 4 TTABVUE 11 (Applicant's Brief).

marks in their entirety. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014) (citing *Nat'l Data Corp.*, 224 USPQ at 751).

Applicant's mark MY EN PRIMEUR and Registrant's mark EN PRIMEUR WINERY SERIES are similar because they share the term EN PRIMEUR. The Examining Attorney and Applicant both submitted evidence explaining that "en primeur" is a French term that refers to "wine futures," that is, a method of purchasing wine while it is still in the barrel, in advance of the official release of the vintage.

In particular, the Examining Attorney made of record a web page from the keyassets.timeincuk.net website which explains that "en primeur is a French wine trade term for wine which is sold as a 'future,' i.e., before it is bottled – usually the year after the en primeur offer."⁵ She also submitted printouts of articles from three U.S. publications which further explain the meaning of this term:

⁵ December 20, 2016 Office Action, TSDR 11. We recognize that this information is from a website originating in the United Kingdom; however, we find it has some probative value of U.S. consumer understanding of the term "en primeur" in relation to Applicant's services and Registrant's goods. See *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1835 (Fed. Cir. 2007) ("Information originating on foreign websites or in foreign news publications that are accessible to the United States public may be relevant to discern United States consumer impression of a proposed mark."). We find so because the website is in English and, given the international nature of the wine industry and the availability of wine in the United States from many countries of origin, it is likely that persons interested in wine will monitor happenings in the field without regard to national boundaries. See *In re King Koil Licensing Co.*, 79 USPQ2d 1048, 1050 (TTAB 2006) (consumers may visit foreign web sites for informational purposes "when researching products they may be planning to purchase").

Citations to the TSDR database are to the downloadable .pdf format.

1. According to a September 28, 1995 article from *Bloomberg Business News*, reported in the *Los Angeles Times*,⁶

Wine futures are a mechanism through which wine makers pre-sell their produce. It's a small international market and focuses on only the wines that command the greatest demand: generally top red and white wines from the Bordeaux and Burgundy regions. Merchants will sell wine futures about eight months after the crop has been harvested. Then speculators, brokers and wine lovers will buy and sell these wine futures, which give the right to delivery of the wine. This process is known as selling a wine "en primeur." The wines are in casks being matured before bottling and won't become available for 18 months to two years. The wines may not be ready to drink for decades. Any reputable wine merchant will be able to help you buy wine "en primeur," provided you are prepared to buy wine by the case, a box of a dozen bottles.

*

Pre-selling wine guarantees a price for the producer and shipper. For the wine lover or investor, the en primeur system provides an opportunity to buy the wine at a cheaper price and to secure a wine early.

2. A March 22, 2015 article by Jon Bonne in *The San Francisco Chronicle* (California)⁷ relays the author's visit to a California winery, after having received an invitation to the winery's

en primeur weekend, when Monte Bello loyalists can taste the components – Cabernets Sauvignon and Franc, Merlot and Petit Verdot – and first snapshot of the blend from the most recent vintage. En primeur is the French term for buying wine in advance of its release. [The winemaker] is a traditionalist with an eye toward Bordeaux, where en

⁶ *Id.*, TSDR 12-13.

⁷ *Id.*, TSDR 14-15.

primeur is mostly a practice for the trade; he democratized it to suit American habits

3. An April 12, 2007 article by Mark Janes in *Reno Gazette-Journal* (Nevada)⁸ provides

Your Bordeaux en primeur primer for 2006: The first week of April is a very important time in Bordeaux, as it is en primeur week. This is the time of the year when all of the wine writers and buyers descend on Bordeaux, taste the new vintage, and work out the deals that determine the wines' prices when they are released.

The Wikipedia article submitted by Applicant fairly summarizes the above explanations.⁹ Applicant also submitted an English translation of the term “en primeur” from Oxford Dictionaries: “(of wine) newly produced and made available.”¹⁰

Based on this evidence, we find the wording EN PRIMEUR somewhat conceptually weak when used on or in connection with wine and wine-related goods and services. However, we do not find, as Applicant urges, that “it is clear that, when used in connection with any wine related goods or services, the phrase ‘En Primeur’ is descriptive as shown by the very definition of the term:

en primeur – (of wine) newly produced and made available.”¹¹

Rather, the evidence demonstrates that “en primeur” is understood as a term of art in the French wine industry and by investors and wine merchants; the term does not appear to be one with which ordinary wine drinkers in the United States would be

⁸ *Id.*, TSDR 16

⁹ June 19, 2017 Response to Office Action, TSDR 58-59.

¹⁰ November 27, 2017 Response to Office Action, TSDR 10.

¹¹ 4 TTABVUE 10 (citing November 27, 2017 Response to Office Action, Exhibit 1, TSDR 10).

familiar. Moreover, there is no evidence that the term is commercially weak for wine and wine-related goods and services. *Cf.*, *Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1135-36 (Fed. Cir. 2015) (at least fourteen relevant third-party uses or registrations of record); *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674-75 (Fed. Cir. 2015) (at least twenty-six relevant third-party uses or registrations of record).

Viewing Registrant's mark EN PRIMEUR WINERY SERIES as a whole, we find the disclaimed wording WINERY SERIES less distinctive than the term EN PRIMEUR because it is highly descriptive of Registrant's identified goods.¹² *Nat'l Data Corp.*, 224 USPQ at 751 ("That a particular feature is descriptive or generic with respect to the involved goods or services is one commonly accepted rationale for giving less weight to a portion of a mark...."). The prominence of EN PRIMEUR in Registrant's mark is further enhanced by its placement in the initial position of that mark. *See Palm Bay Imps.*, 73 USPQ2d at 1692 ("Veuve" is the most prominent part of the mark VEUVE CLICQUOT because "veuve" is the first word in the mark and the first word to appear on the label); *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) ("[I]t is often the first part of a mark which is most likely to be impressed in the mind of a purchaser and remembered.").

¹² We would be remiss if we did not note that Registrant disclaimed EN PRIMEUR WINERY SERIES in the other cited registration (Registration No. 5216277). We do not speculate why the disclaimers differ in each registration, and simply reiterate that on this record, we find the term EN PRIMEUR somewhat conceptually weak with respect to wine and wine-related goods and services.

With regard to Applicant's mark MY EN PRIMEUR, the pronoun MY, a "possessive determiner" defined as "belonging to or associated with the speaker,"¹³ has comparatively less trademark significance than the term EN PRIMEUR. As used in Applicant's mark, the pronoun MY simply indicates possession or, as Applicant asserts, "Applicant's mark means that consumers are able to acquire their own personal en primeur wines."¹⁴ Thus, when Applicant's mark MY EN PRIMEUR is viewed as a whole, we find the term EN PRIMEUR to be the dominant element thereof. We further find the placement of the prefatory pronoun MY before EN PRIMEUR in Applicant's mark reinforces the dominance of the term EN PRIMEUR. *Cf. Nat'l Data Corp.*, 224 USPQ at 752; *Palm Bay Imps.*, 73 USPQ2d at 1692. Indeed, Applicant's use of the pronoun MY is akin to use of an apostrophe "S," which indicates possession and does not affect the overall similarity of marks. *See Binion*, 93 USPQ2d at 1534 ("The absence of the possessive form in applicant's mark BINION has little, if any, significance for consumers in distinguishing it from the cited mark.").

Finally, both marks are in standard characters and therefore not limited to any particular depiction. The rights associated with a standard character mark reside in the wording and not in any particular display. *In re RSI Sys. LLC*, 88 USPQ2d 1445, 1448 (TTAB 2008); *In re Pollio Dairy Prods. Corp.*, 8 USPQ2d 2012, 2015 (TTAB 1988); Trademark Manual of Examining Procedure ("TMEP") § 1207.01(c)(iii) (Oct. 2017). We must consider both standard character marks "regardless of font style, size,

¹³ December 20, 2016 Office Action, TSDR 17.

¹⁴ 4 TTABVue 13.

or color” *Citigroup Inc. v. Capital City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1259 (Fed. Cir. 2011), including iterations that emphasize the shared term EN PRIMEUR, such as that depicted in Registrant’s other registration



For these reasons, we find that EN PRIMEUR is the most distinctive element in Applicant’s mark MY EN PRIMEUR and Registrant’s mark EN PRIMEUR WINERY SERIES. EN PRIMEUR thus is entitled to more weight in our analysis of these marks. In coming to this conclusion, we do not discount the presence of the additional terms in each mark. However, for the reasons discussed above, we find that the term EN PRIMEUR in each mark is more likely to be remembered by consumers than the other elements of the marks even though EN PRIMEUR is recognized as a term of art in the French wine industry and therefore not entirely arbitrary when applied to the identified goods or services. *Nat’l Data Corp.*, 224 USPQ at 751.

Ultimately, we find that in their entirety, Applicant’s standard character mark MY EN PRIMEUR and Registrant’s standard character mark EN PRIMEUR WINERY SERIES are very similar in appearance, sound, and connotation due to the common presence of the identical term EN PRIMEUR, and that the marks convey similar commercial impressions overall.

B. Relatedness of the Goods and Services and Channels of Trade

With regard to the goods and services and the channels of trade, we must make our determinations under these factors based on the goods and services as they are

identified in the application and registration. *See In re Dixie Rests.*, 105 F.3d 1405, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997). *See also Stone Lion*, 110 USPQ2d at 1161; *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004-05 (Fed. Cir. 2002); *Octocom Sys., Inc. v. Hous. Computs. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990).

1. Relatedness of Goods and Services

The second *du Pont* factor “considers whether the consuming public may perceive [the respective goods and services of the parties] as related enough to cause confusion about the source or origin of the goods and services.” *St. Helena Hosp.*, 113 USPQ2d at 1086 (quoting *Hewlett-Packard*, 62 USPQ2d at 1004). The cited registration identifies kits for making wine at home, while the application identifies on-line retail stores featuring wine.

Although the goods identified in the registration are not identical to the services identified in the application, identity is not required to support a finding of likelihood of confusion. *Coach Servs.*, 101 USPQ2d at 1722 (“[I]t is not necessary that the products [or services] of the parties be similar or even competitive to support a finding of likelihood of confusion.”) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)). *See also On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000) (the goods and services need not be identical or even competitive to find a likelihood of confusion). Rather, “likelihood of confusion can be found ‘if the respective products [or services] are related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that they emanate from the same source.’” *Coach*

Servs., 101 USPQ2d at 1722 (quoting *7-Eleven*, 83 USPQ2d at 1724). The issue is whether there is a likelihood of confusion as to the source of the goods and services, not whether purchasers would confuse the goods and services. *L’Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1439 (TTAB 2012); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984).

The evidentiary record demonstrates that the goods identified in the registration and the services identified in the application are commercially related. In particular, the Examining Attorney submitted Internet web pages from five third-party websites demonstrating that a single entity is likely to sell wine and supplies for making wine at home under the same mark, and/or to advertise them on the same website:

1. Presque Isle Wine Cellars offers “our Home Wine Making Equipment Kits” that “contain all of the wine making equipment, supplies, and how-to information you will need to ensure wine making success, assembles into one convenient product, offering substantial savings over purchasing the items individually.” The kits include the original and a deluxe version of the “PIWC [Presque Isle Wine Cellars] Wine making kit.” This winery also sells various wines online, all of which bear the name “Presque Isle Wine Cellars” as a house mark.¹⁵
2. Wine Barrel “offer[s] a unique selection of wines from around the world” as well as wine making supplies including 5 and 6 Gallon “Basic Winemaking

¹⁵ December 18, 2017 Final Office Action TSDR 18-24.

Equipment Kit[s],” which reflects the sale of wine making kits on sites selling wine.¹⁶

3. City Scape Winery offers various wines through its online store as well as “juices, supplies & equipment” to make wine at home.¹⁷
4. Fulkerson Winery “presses and offers over 30 different varieties of grape juice to home wine makers” as well as various wines.¹⁸
5. Little Italy Wines offers a variety of wines as well as “Wine Making Kits.”¹⁹

This evidence supports a finding that wine and supplies for making wine at home are related and will be encountered by the same consumers under the same mark, and that wineries and wine stores offer both types of goods for sale at their establishments, and that wineries do so under their own label. *See, e.g., In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-04 (TTAB 2009); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1268-69 (TTAB 2009).

The Examining Attorney also submitted one third-party use-based registration from the USPTO’s electronic database for the mark VINTNER’S CIRCLE YOUR WINE. YOUR WAY., which identifies wine and kits for making wine as well as retail store services featuring wine and wine-making goods.²⁰ While this evidence is not

¹⁶ *Id.* TSDR 32-36.

¹⁷ *Id.* TSDR 37-51.

¹⁸ *Id.* TSDR 52-56.

¹⁹ *Id.* TSDR 57-64.

²⁰ *Id.* TSDR 12-14 (Registration No. 3522142). The Examining Attorney submitted a few other third-party registrations (*see* July 7, 2017 Office Action TSDR 12-23), but they do not identify both wine-making supplies/kits and wine or stores that sell wine. Consequently, they are less probative of the commercial relationship between the goods and services here at issue.

overwhelming, and it is not evidence that the mark shown therein is in commercial use, or that the public is familiar with the mark, the registration may have some probative value to the extent that it serves to suggest that the listed goods and services are of a type which may emanate from a single source. *See In re Aquamar, Inc.*, 115 USPQ2d 1122, 1126 n.5 (TTAB 2015); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988); *see also In re Anderson*, 101 USPQ2d 1912, 1919 (TTAB 2012); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993). As such, this registration provides additional support that kits for making wine at home and online retail stores featuring wine are related.

The Examining Attorney's argues that "[t]he goods and services of the parties are significantly related because the applicant's services are on-line retail store services that feature wine and it is reasonable to conclude that wine kits can be featured as a part of the retail store services[.]"²¹ and "Applicant identifies retail store services that could reasonably include wine making kits."²² We do not find this argument persuasive. Instead, we agree with Applicant, who asserts that "Applicant's services involve the retail sale of wine and wine only, they do not include wine making kits."²³ We reiterate that we are bound by the identifications of goods and services as they are set forth in the application and cited registration. *See Stone Lion*, 110 USPQ2d at 1161. Nonetheless, as discussed above, "likelihood of confusion can be found 'if the

²¹ 6 TTABVUE 11 (Examining Attorney's Brief).

²² *Id.* at 13.

²³ 7 TTABVUE 6 (Applicant's Reply Brief).

respective products [or services] are related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that they emanate from the same source.” *Coach Servs.*, 101 USPQ2d at 1722 (quoting *7-Eleven*, 83 USPQ2d at 1724).

Based upon the evidence of record, we find that the services identified in the application are related to the goods identified in the registration, and that consumers would believe that they may emanate from a common source.

2. Channels of Trade

Considering the channels of trade and classes of purchasers, because there are no limitations or restrictions as to trade channels or classes of purchasers in the identifications of goods in the registration or the identification of services in the application, we presume that the identified goods and services are or would be marketed in all normal trade channels for such goods and services and to all normal classes of purchasers of such goods and services. *Stone Lion*, 110 USPQ2d at 1161; *see also Coach Servs.*, 101 USPQ2d at 1723 (absent limitation “goods are presumed to travel in all normal channels ... for the relevant goods.”). The trade channels for both Registrant’s goods and Applicant’s services would include wineries and wine stores. The relevant class of consumers is the same for Registrant’s goods and Applicant’s services, i.e., those who enjoy wine. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000) (affirming Board finding that where the identification is unrestricted, “we must deem the goods to travel in all appropriate trade channels to all potential purchasers of such goods”); *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981). The relatedness evidence from the commercial

websites listed above (e.g., Presque Isle Wine Sellers, Wine Barrel Plus and Little Italy Wines), and the Williams Sonoma online wine store, which offers various wines as well as a Brooklyn BrewShop “Sparkling Wine DIY Kit,”²⁴ confirms that wine making kits and supplies and online retail stores featuring wine travel in the same channels of trade and are offered to the same classes of consumer. *See Anderson*, 101 USPQ2d at 1920.

The similarities of the goods and services and their channels of trade weigh heavily in favor of a finding of likelihood of confusion.

II. Conclusion

We have considered all of the arguments and evidence of record, including those not specifically discussed herein, as they pertain to the relevant *du Pont* factors. We conclude that Applicant’s mark MY EN PRIMEUR is very similar to the cited mark EN PRIMEUR WINERY SERIES, and that the services identified in the application are commercially related to the goods identified in the registration, and move through the same channels of trade to the same class of customers. We therefore find that Applicant’s mark is likely to cause confusion with the cited mark when used on or in connection with the services identified in the application.

Decision: The Section 2(d) refusal to register Applicant mark is affirmed.

²⁴ December 18, 2017 Final Office Action TSDR 25-31.